169

(1)

Supreme Court, U.S.
FILED

10-260 JUN 23 2010

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

Stephen G. Mattis

V.

State of New Jersey, et. al.

**On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit**

PETITION FOR WRIT OF CERTIORARI

Stephen G. Mattis
S-3
301 W. Delilah Rd.
Pleasantville, NJ
08232
609 204 7792
Petitioner/Pro-se

QUESTION PRESENTED

Under a timely filed 60(b) motion where there has been a showing of innocence; along with well-demonstrated liberty and vested property *continuing collateral consequences* satisfying this Court's "in custody" clearly established case law; and claims of prosecutorial misconduct, under *Brady*, concurrent with *Caperton* judicial bias and *Strickland* arguments;

1. should the Third Circuit have granted a Certificate of Appealability, as Stephen more than surpassed the COA grant threshold, under *Miller-El* and "clearly established" federal law, under *2253(c)(2)*;

2. should the Third Circuit have reversed motion denial, as innocence is an "extraordinary circumstance" warranting 60(b) relief and under Habeas equitable principles and under § 2243 " law and justice disposition" so that petitioner would be able to amend and to clarify petition, if required, with original pro se clarity absence considered excusable for complex Habeas filings;

3. and do petitioner's continuing collateral consequences satisfy Habeas "in custody" requirements under this Court's precedents, as to liberty and to property interests under U.S. Const. Article III case and controversy;

4. and finally and in the context of the *innocent*, are there always continuing collateral consequences to a conviction or to a plea satisfying "in custody" for 2254 or 2255 jurisdiction?

TABLE OF CONTENTS

QUESTION PRESENTED.....i

TABLE OF AUTHORITIES.....iv

OPINION BELOW.....1

JURISDICTION.....1

STATUTORY PROVISIONS.....2

STATEMENT OF THE CASE.....2

REASONS FOR GRANTING THE WRIT.....7

COMPOUND OPPORTUNITIES PRESENTED BY PETITION RESPECTING: COLLATERAL CONSEQUENCES, KIV PLEAS, INNOCENCE AND THOSE CONSIDERATIONS UNDER RULE 60(B); AND PRIVATE AND STATE COOPERATION DURING TRUMPED CRIMINAL PROCEEDINGS WARRANT THIS COURT'S WRIT EXERCISE DECLARING HABEAS RELIEF POLICIES WHERE ALL ARE VITAL TO AND RECURRENT TO ISSUES BEFORE COURTS, COUNSEL AND PETITIONERS..... 7

1. INNOCENCE..... 11

A. PETITIONER IS INNOCENT OF PERJURY AND RELIEF IS WARRANTED UNDER RULE 60(B) FOR HABEAS WRIT, UNDER CLEARLY ESTABLISHED SUPREME COURT PRECEDENT AND AS CITED TO THE LOWER COURTS..... 11

2. RULE 60(B) MOTIONS..... 16

B. CONTINUING COLLATERAL CONSEQUENCES SATISFY JURISDICTIONAL IN CUSTODY" REQUIREMENTS, AS DECLARED BY THIS COURT AND AS GUARANTEED AND PROTECTED CONSTITUTIONAL LIBERTY AND PROPERTY INTERESTS WARRANTING CERTIORARI FOR FURTHER DEFENITION; AND ALSO IN THE CONTEXT OF THE INNOCENT PETITIONER..... 19

1. REPUTATIONAL LIBERFTY INTERESTS..... 19

2. ECONOMIC PROPERTY INTERESTS..... 22

3. COLLATERAL CONSEQUENCES ATTACH TO WRONGFUL CONVICTIONS/PLEAS CONFERRING HABEAS JURISDICTION.....22

C. INEFFECTIVENESS OF COUNSEL DURING INDICTMENT AND PLEA STAGES DENIED PETITIONER SIXTH AMENDMENT PROTECTION CONTRARY TO STRICKLAND AND THE STRICTER KNOWLES STANDARDS OF THIS COURT..... 24

D. THE STATE DENIED PETITIONER FOURTEENTH AMENDMENT DUE PROCESS THROUGH JUDICIALLY BIASED FORUM AND THROUGH DISMISSAL OF CIVIL SUIT BY A CRIMINAL DIVISION JUDGE WHERE THERE WAS CONFLICT OF INTEREST *ALONG* WITH SIXTH AMENDMENT GUARANTEES OF AN IMPARTIAL FORUM *AND* AS ACTING IN CONCERT WITH PROSECUTORIAL MISCONDUCT..... 27

CONCLUSION..... 31

TABLE OF AUTHORITIES

CASES,

Ackermann v. United States,
340 U.S. 193 (1950)..... 17

Baldayaque v. United States,
338 F3d 145 (CA2 2003)..... 17

Banks v. Dretke,
540 U.S. 668, 696 (2004)..... 30

Benton v. Maryland,
395 U. S. 784, 790 (1969)..... 30

Bounds v. Smith,
430 U.S. 817, 825 (1977)..... 24

Bousley v.United States,
523 U.S. 614,615 (1998)..... 14

Bracy v. Gramley,
520 U.S. 899 (1997)..... 27

Brady v. Maryland,
373 U.S. 83 (1963)..... 28

Calderon v. Thompson,
523 U.S. 538, 559 (1998)..... 14

Caperton et. al. v. A.T. Massey Coal Co. Inc.,
556 U.S.___, 129 S.Ct. 2252 (2009)..... 27

Cone v. Bell,
07-1114, 556 U.S. (2009)..... 28

Cornblatt v. Barow,
153 N.J. 218, 233 (1998)..... 26

Crawford v. Washington,
541 U.S. 36 (2004)..... 26

Donnelly v. DeChristoforo,
416 U.S. 637, 643 (1974)..... 16

Estelle V. Williams,
425 U.S. 501, 503 (1976)..... 16

Gertz v. Robert Welch, Inc.,
418 U.S. 323, 341 (1974)..... 20

Glover v. United States,
531 U.S. 198, 202-03 (2001)..... 24

Gonzalez v. Crosby,
545 U.S. 524, 532 (2005)..... 18

Harris v. Nelson,
394 U.S. 286 (1969)..... 7

Henderson v. Morgan,
426 U.S. 637 (1976)..... 24

Herrera v. Collins
507 U.S. 390 (1993)..... 13

Hill v. Lockhart,
474 U.S. 52 (1985)..... 26

House v. Bell,
547 U.S. 518, 554 (2006)..... 13, 14

In re Winship,
397 U.S. 358 (1970)..... 14

Kimmelman v. Morrison,
477 U.S. 365 (1986)..... 25

Klapprott v. United States,
335 U.S. 601, 615 (1949)..... 17

Knowles v. Mirzayance,
129 S.Ct. 1411 (2009)..... 26

Kugler v. Helfant,
421 U.S. 117, 124 (1975)..... 16

Kuhlmann v. Wilson,
477 U.S. 436, 455 (1986)..... 7
Lawrence v. Texas,
539 U.S. 558, 575-576 (2003)..... 23

Lisenba v. California,
313 U.S. 219, 236 (1941)..... 16, 21

Lonchar v. Thomas,
517 U.S. 314, 324 (1996)..... 9

McMann v. Richardson,
397, U.S. 759, 773 (1970)..... 15

Meese v. Keene,
481 U.S. 465 (1987)..... 20

Melendez-Diaz v. Massachusetts,
129 S. Ct. 2527 (2009)..... 26

Milkovich v. Lorain Journal,
497 U.S. 1, 21-22(1990)..... .. 21

Miller-El v. Cockrell,
537 U.S. 322, 341 (2003)..... 9

Mitchell v. Rees,
430 F. Supp2d717 (M.D. Tenn, 2006)..... 18

Nappe v. Illinois,
360 U.S. 264, 270 (1959)..... 30

New York Times Co. v. Sullivan,
376 U.S. 254 (1964)..... 22

Paul v. Davis,
424 U.S. 693, 712 (1976)..... 21

Phelps v. Almeida,
569 F3d 1120 1137 (9th Cir 2009)..... 18
Pioneer Investment Svcs.
Co. v. Brunswick Assoc. LP,
507 U.S. 380 (1993)..... 16

Sawyer v. Whitley,
505 U.S. 333 (1992)..... 12

Schlup v. Delo,
513 U.S. 298, 325 (1995)..... 13, 14

Sibron v. New York,
390 U.S. 40 (1968),..... 23

Slack v. McDaniel,
529 U.S. 473, 484 (2000).....9, 10

Smaldone v. Senkowski,
273 F3d 133 (CA2 2001).....17

Spencer v. Kemna,
523 U.S. 18 (1998)..... 23

St. Pierre v. United States,
319 U.S. 41 (1943..... 2

Strickland v. Washington,
466 U.S. 668 (1984).....24, 25

Tennard v. Dretke,
124 S.Ct. 2562, 2573 (2004)..... 9

Tollett v. Henderson,
411 U.S. 258, 267 ((1973).....15,24

Townsend v. Sain,
372 U.S. 293 (1963)..... 7

United States v. Bagley,
473 U.S. 667, 682 (1985)..... 30

United States v. Broce,
488 U.S. 563, 569 (1989)..... 15

United States v. Ruiz,
536 U.S. 622, 629 (2002)..... 15

Wieman v. Updegraff,
344 U.S. 183, 191 (1952)..... 22

Wiggins v. Smith,
539 U.S. 156 (2003)..... 26

Williams v. Taylor,
529 U.S. 4209 (2000)..... 25

Woodford v. Garceau,
538 U.S. 202, 207 ((2003)..... 7

U.S. Constitution,

Article IV,
Privileges and Immunities,
Section 2..... 27

Sixth Amendment.....5,23,26

Fourteenth Amendment.....16,21,23,26

28 U.S.C.A. § 2243 .....7, 14

28 U. S. C. A. § 2244(b)(2)..... 18

28 U. S. C. A. § 2253(c)(2)..... 1

28 U. S. C. A. § 2254.....7,12

F.R.C.P 60(b).....1,6,13,16

Habeas Corpus R. 6(a).....28

N.J. Constitution, Article I,.....21

(N.J.S.A. 2C:28-1): Perjury.....11

[2C:28-1(b)]: Perjury, Materiality.....11

(N.J.S.A 45:1-2.1 *et.seq.*). Professions,..... 12
Licenses, Medicine

N.J. Ct. Rule 3:9-2.....5,24,26

LAW REVIEWS, BOOKS

The Future of Reputation: gossip, rumor,
and privacy on the Internet,
(Yale U. Pr.-2007) Daniel Solove..... 20

The Stigma of Conviction: Coram Nobis,
Civil Disabilities, and the Right to Clear
ones' Name, 2009 Brigham Young U.L.Rev
.1277, 1316, David Wolitz..... 20

What Do Alternative Sanctions Mean?
63 U. Chi. L.R. 591, 636 (1996)
Daniel M. Kahan..... 21

APPENDIX

DCNJ DISMISSAL 1/14/09..... 1

DCNJ RECONSIDERATION DENIAL 7/29/09.....7

THIRD CIRCUIT AFFIRMANCE 1/28/10..... 14

SUPREME COURT FILING EXTENSION DATE..... 16

CONSTITUTION & STATUTES..... 17

Stephen G. Mattis, petitioner pro se, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS AND JUDGMENTS BELOW

The District Court of New Jersey dismissed Habeas petition, without prejudice, and denied issuance of Certificate of Appealability on January 14, 2009(App.1). Motion to vacate dismissal, under F.R.C.P. 60(b) was denied on July 29, 2009 and was received by petitioner on August 31, 2009 due to incorrect mailing address by the court (App.7). District Court granted an equitable extension to file late Notice of Appeal and as being filed on September 21, 2009 which also included Motion for Issuance of Certificate of Appealability to Third Circuit (App.13). The Third Circuit Panel's unpublished affirmed denial of a Certificate of Appealability and relief denial of F.R.C.P. 60(b) motion on January 28, 2010 (App.14). Justice Samuel A. Alito granted an equitable extension to file Certiorari Petition on March 12, 2010 up unto the date of June 28, 2010 (App.16).

STATEMENT OF JUSRISDICTION

The Third Circuit entered judgment denying Habeas Corpus relief on January 28, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Jurisdiction of the District Court of New Jersey was based upon 28 U.S.C. § 2254.Jurisdiction of the Third Circuit Court of Appeals was based upon 28 U.S.C. § 2253.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Those cited provisions, within, are reproduced in the Appendix following and appended to this petition. (App. 17)

STATEMENT OF THE CASE

INTRODUCTION

Petitioner, Stephen Mattis, became paralytic resulting from a December 1992 stair fall at a casino garage in Atlantic City, New Jersey. The event is central to this state and federal criminal matter. Two weeks prior to his fall, Stephen had seen an area chiropractor for a limp; subsequently diagnosed at Thomas Jefferson Hospital where he had been helicoptered from the ACMC ER for immediate continuing emergency spinal treatment, for life-threatening Deep Vein thrombosis in his left leg and causing his limp. Parenthetically, the chiropractor had been treating the DVT with "spinal adjustments." During the same period, Stephen had also slipped at the gym and pulled a hip flexor muscle, but neither his gait nor his ambulation was impacted in any manner. Reverting to his ACMC ER immediate post fall admission, the treating neurosurgeon's medical records state; "We note increasing spinal cord edema." The significance of this entry would go to the recent nature (few hours) of the spinal trauma.

Stephen's criminal charges were based upon his answers at the civil depositions and as being perjured, under New Jersey statues, as later advised by his criminal defense attorney. This advice was grossly and prejudicially wrong. Stephen obtained civil representation and filed suit against Caesars

Boardwalk Regency Casino for their negligent garage operation. Common to the majority of civil actions, discovery evolved, interrogatories were exchanged, and depositions were taken. In fact two depositions were taken of petitioner.

While Stephen's civil suit was proceeding and prior to trial, the woman caretaker, who had robbed him while he was being treated in Miami for additional spinal therapy, vindictively went to the county prosecutor and manufactured a story; wherein, she related that petitioner staged his casino fall to cover for previous injuries sustained at a gym and that the proof of those injuries were within his chiropractor visits for a limp. Essentially, the staged fall and subsequent suit was to gain monetary sums as coverage for his substantial medical bills related to his spinal injuries. The State ignored the fact that Stephen had previously filed criminal charges for her $12,000.00 theft of his bank account and proceeded on a criminal case theory against petitioner and even though they obtained chiropractor medical and billing records showing complete medical insurance coverage through his union membership for all injuries. With the State's cooperation during criminal proceedings, the chiropractor taped a conversation with petitioner, unknowingly, where the chiropractor admitted on-the-record that he destroyed Stephen's medical and billing records. These records were exculpatory for Stephen, but eventually obtained by him from his civil attorney.

Preposterously, among information or testimony submitted to the indicting Grand Jury was that of prosecutor's investigator sergeant who opined expert medical testimony after comparing pre and post spinal cord x-rays of petitioner's spinal cord to confirm injury and time of injury and to bolster State's Case

Theory. The sergeant was not a medical doctor and his opinion was contrary to petitioner's treating neurosurgeons and medical records. Eventually, the State brought a five Count indictment against Stephen charging theft by Deception and Perjury for staging a fall at a casino and for lying under oath at civil depositions. There were no depositional misrepresentations. Caesars Casino was represented by Cooper Levenson and their lead attorney was former First Assistant County Prosecutor, Lloyd Levenson who was also former partner with Robert Neustadter in the same firm. Judge Neustadter was assigned to handle Stephen's criminal case. Judge Neustadter's Brother Milton also worked as a Key Executive at Caesars Casino during these early actions' time frames and the Neustadter family related to Robert had sold their partnership in Howard Johnson to Caesars Casino. The family also retained ownership in land directly adjacent to the casino and leased it to the Casino which built a garage where the fall occurred and did sell their interest a year prior to the fall. Judge Neustadter did handle Stephen's Post-Conviction Relief applications later and did refuse to recuse himself indicating that he could be fair during the PCR applications. While he did indicate that his Brother Milton no longer worked at Caesars, he did not mention that his relatives previously, and until recently, owned an interest in the garage where the fall took place.

Eventually, the indictment culminated in a plea agreement where Stephen pled guilty to committing perjury during civil depositions, and only upon advice of his counsel. Judge Neustadter handled the plea session in open court. When he signed the plea agreement, it went to Chambers and when it came back from chambers; it had the notation penciled in: "Civil suit against Caesars Casino dismissed." When

Stephen questioned his criminal defense attorney about this aspect of the plea which was not mentioned in open court and was not on-the-record and prior to the plea agreement being submitted to the Judge's Chambers and after Stephen's signature was affixed, the reply was: "That's how it's done." This is contrary to N.J. Court Rule 3:9-2.

Petitioner exhausted his State-level applications for Post-Conviction Relief and then sought relief in the federal forum through Habeas Corpus relief. Petitioner argued and demonstrated innocence of perjury charges and ineffective assistance of counsel for advising client to plead guilty to a crime not committed, among other negligence causing prejudice to petitioner.

FEDERAL HABEAS PROCEEDINGS

After running and exhausting the shoal waters of the state courts from 2002 to 2007, Stephen sought Habeas relief in the Fall of 2008 and was subsequently denied without prejudice on January 14 of 2009, because petitioner was no longer "in custody." (App 3) Subsequently, petitioner filed an untimely Motion for Reconsideration in February 2 of 2009 and later requested that DCNJ hold up a decision on that motion while he was preparing a Rule 60(b) motion.

Stephen filed timely Rule 60(b) motion essentially arguing: innocence resulting in miscarriage of justice, collateral consequences upon petitioner impact liberty and property interests sufficient to overcome mootness, ineffectiveness of counsel at indictment and plea stages, petitioner's failure to fully develop and to satisfy "in custody" aspect of his habeas petitions is excusable, and dismissal of petitioner's civil suit by a criminal division judge contravenes Sixth Amendment

impartiality guarantees and Fourteenth Amendment Due process guarantees. Six supporting, elucidating exhibits accompanied the motion.

In the DCNJ's dismissal order of January 2009, the court felt as though petitioner should resort to a Writ of Error of Coram Nobis in the state court system rather than Habeas relief. (App) In this rule 60(b) motion, Stephen reminded the District Court that the Writ had been abolished in New Jersey since 1948.

The gravamen of DCNJ's motion dismissal was based on a finding of no "in custody" and that there were no "extraordinary circumstances" warranting relief for petitioner. (App 2) Thereafter, Stephen filed a timely Notice of Appeal for the Rule 60(b) dismissal and concurrently moved the Third Circuit for issuance of a Certificate of Appealability.

The innocence and its weight and priority were never addressed or were ignored. The Third Circuit denied a Certificate of Appealability, because there was "no substantial showing of the denial of a constitutional right" and it also adopted "substantially" the same reasons given by the District Court that "reasonable jurists" would not debate the District Court's rule 60(b) motion denial. The Order relating to the Habeas Petition was untimely and consideration was only to relief, under the procedural motion.

REASONS FOR GRANTING THE WRIT

COMPOUND OPPORTUNITIES PRESENTED BY PETITION RESPECTING: COLLATERAL CONSEQUENCES, KIV PLEAS, INNOCENCE AND THOSE CONSIDERATIONS UNDER RULE 60(B); AND PRIVATE AND STATE COOPERATION DURING TRUMPED CRIMINAL PROCEEDINGS WARRANT THIS COURT'S WRIT EXERCISE DECLARING HABEAS RELIEF POLICIES WHERE ALL ARE VITAL TO AND RECURRENT TO ISSUES BEFORE COURTS, COUNSEL AND PETITIONERS.

Whether a first or a successive petitioning, where "a petitioner supplements his constitutional claim with a colorable showing of factual innocence; the "ends of justice" require that a federal court entertain such a petition." Kuhlmann v. Wilson, 477 U.S. 436, 455 (1986). Section *2243* appears to be in accord with *Kuhlmann*. Although petitioner's filing is post-AEDPA, (*Anti-terrorism Effective Death Penalty Act of 1996*) equitable Habeas principles still apply and the AEDPA did not repeal the fundamental purpose of the Writ. As this Court has stated: "Our cases make clear that AEDPA in general and § 2254(d) in particular focus in large measure on revising the standard used for evaluating the *merits* of a habeas application." Woodford v. Garceau, 538 U.S. 202, 207 ((2003). Where there are deprivations of constitutional rights, petitioners are entitled to a Habeas hearing; furthermore, the District Court is not bound by a State Court's fact-finding. *See*: Townsend v. Sain, 372 U.S. 293 (1963). This Court later *Held*: "Federal courts upon an appropriate showing must grant evidentiary hearings to petitioners for writs of habeas corpus and the power of inquiry on federal habeas

corpus is plenary." Harris v. Nelson, 394 U.S. 286 (1969). Additionally within *Harris* at 293 the Court stated: "A Habeas Corpus proceeding must not be allowed to flounder in a 'procedural morass'."

With pre-AEDPA foundational principles firmly established, this Court must continue to exercise commanding vigilance over constitutional mandates and particularly in the areas of personal liberty, personal freedom through Habeas relief. The passage of time serves to magnify, rather than diminish, the recurring importance of the questions presented. Those similarly situated, now and in the future, shall only benefit from this Court's guiding policies and affirming constitutional guarantees. Additionally and respecting AEDPA, this Court must assume that Congress did not mean to create any unfairness or inequity for petitioners, especially the innocent. A history of AEDPA shows that it was in response to the Oklahoma City and first World Trade Center bombings and not enacted as a deprivation of any constitutional guarantee(s) protection avenue or vehicle.

There should be no dispute that a capital deprivation demands the greatest attention and resource application of courts when facing the ultimate; similarly, a non-capital liberty deprivation may involve a lost lifetime incarcerated or ruined by the effects of a period behind bars or imposed stigmatization. Science, technology, and mass communications have created a contemporary revolution with troubling frequency of more and more innocence claims coming to light for relief; and more and more past innocence claims surfacing where innocent have been sent to prison for a lifetime, or to suffer a worse horror. We commonly understand, as a Nation, that 95% or more of our criminal charges

result in a plea, including capital cases to avoid the Death Penalty.

This Court should grant certiorari to review the decision below, because "the dismissal of the first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Lonchar v.Thomas, 517 U.S. 314, 324 (1996). This matter presents a compelling case for this Court to review the denial of an application for a Certificate of Appealability to correct erroneous resolution of legal questions by the courts below that shall also have future impact on numerous other petitions addressing broad Habeas legal issues and just as it did in Tennard v. Dretke, 124 S.Ct. 2562, 2573 (2004) and Miller-El v. Cockrell, 537 U.S. 322, 341 (2003).

Stephen's briefing record below reflects more than a "substantial showing of the denial of several constitutional rights" (due process denial by a biased forum, prosecutorial misconduct, grossly ineffective assistance of counsel at the indictment and plea stages). Competent counsel would have had the indictment dismissed and there would not have been a plea stage or there would have been a trial where the State's proof(s) and witnesses, or lack of, would have been flatly impeached owing to absolute innocence. Under Miller-El at 336, the threshold inquiry does not require full consideration the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. "Under controlling standards, a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." (quoting Slack at 484, and as also cited by

the Third Circuit in their dismissal Order) (App. 14) "When the District Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim(s), a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack* at 484. It follows that "Jurists of Reason" would have, or should have been expect to, follow binding precedent of this Court and would have granted a COA.

It would further seem that there may be confusion, as to the meaning, or definition, or application of the terms: "substantial showing," "jurists of reason," "valid claim," and "debatable" and this Court should further address these critical qualifying Habeas terms; because it appears that lip service is now being paid to the same. It may very well be that a dismissing mindset prevails upon arrival of Habeas petitions at Chambers and owing to the low status or low esteem of filing parties. By analogy and as additional impetus to grant this Writ of Certiorari, Habeas petitions are rarely granted; and similarly, Certiorari Petitions are rarely granted. The weight and impact may very well not be equal; however, there may be considerable merit to Habeas filings where they should not be taken in and reviewed with a prejudicial mindset. Concurrent with other cited reasons; a grant, herein, would confer broad benefit to numerous other COA applicants and for Courts weighing the preceding terms' applications.

1. INNOCENCE

A. PETITIONER IS INNOCENT OF PERJURY AND RELIEF IS WARRANTED UNDER RULE 60(B) FOR HABEAS WRIT, FOR HABEAS WRIT, UNDER CLEARLY ESTABLISHED SUPREME COURT PRECEDENT AND AS CITED TO THE LOWER COURTS.

This non-capital innocence petition involves the application of New Jersey's Perjury statute (N.J.S.A. 2C:28-1). There are no lengthy and complex trial and discovery records for this Court to sift through for resolution and the involved principles present teaching opportunities and additional seasonable definition opportunities for this Court.

As argued to the District Court and the reviewing Third Circuit, perjury charges were predicated upon Stephen's two visits to a chiropractor two weeks prior to his casino fall and subsequent paralysis and his depositional answers related to those visits. Under New Jersey's perjury Statute, the test for culpability is that if statements given were "Material" to a proceeding in that "they could have affected the proceedings outcome." [2C:28-1(b)] Petitioner was asked questions pertaining to his past chiropractor visits, as having had any. He answered those that he could recall having had seen in the past ten years, but not all of them. Whether he named all of them or omitted any is irrelevant, there was never any expert medical testimony to relate those chiropractor visits to his later spinal injury and paralysis. The chiropractor visits were not "material" to the outcome of his civil suit, nor could they have ever been. Under New Jersey law, a chiropractor may not give a medical opinion. It's that simple and clean and the

State may not "bootstrap" a medical opinion out of a chiropractor's comments; especially against "treating neurosurgeon's." The State never produced an expert witness, other than a chiropractor's opinion treating Deep Vein Thrombosis, to testify or to opine the nature and cause of Stephen's spinal cord paralysis.

Essentially, the State engaged in another Fourteenth Amendment Due Process violation by permitting a chiropractor to practice medicine without a license which is criminal (N.J.S.A.45:1-21.1 *et.seq.*). Parenthetically, the State did produce a Sargeant Investigator to render a medical opinion on spinal cord injury and the causal relationship to paralysis. Additionally, the civil defendants never produced an expert witness to medically corroborate any of the chiropractor's comments, opinions. Although non-capital and while weighing grant considerations, this Court should pay particular heed to the degree and to the long-term, ongoing state level involvements of the executive and of the judicial branches in an effort to protect a well-connected casino with their judicial penumbra.

As a reminder and as was presented to both the State and the Federal courts through admissible medical records, including treating neurosurgeons' opinions; increasing cord edema is associated with very recent (hours) trauma which was found at ACMC ER immediately upon petitioner's post-casino fall admission. There was no countering expert medical testimony by either the State or the civil suit defendants to impeach the treating neurosurgeon's diagnosis and initial emergency attempts to suppress and to control the advancing spinal cord edema. The emergency helicopter transfer to Thomas Jefferson's spinal Unit in Philadelphia from the ER speaks for itself through an emergency transport to a regional

spinal trauma center at TJUH in Philadelphia from Atlantic City.

Both statutory and this Court's case law authoritatively qualified petitioner's application with both being ignored. 2254(e)(2)(ii)(B) provides a "clear and convincing" standard. The articulated standard is in accord with the holding of: Sawyer v. Whitley, 505 U.S. 333 (1992) Petitioner argued the Schlup "gateway" innocence claim which carried a lesser burden than the stricter Herrera threshold. Schlup v. Delo, 513 U.S. 298, 325 (1995) and Herrera v. Collins 507 U.S. 390 (1993) Schlup involved a claim of actual innocence accompanied with an assertion of manifest constitutional error; and Herrera's claim of innocence had a higher standard imposed for substantive innocence claims, but Herrera did state at 404: "...we have held that a petitioner otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence.

This rule, or fundamental miscarriage of justice exception, is grounded in the equitable discretion of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons." Schlup, 513 U.S. at 319 ("court has adhered to the principle that Habeas Corpus is, at its core, an equitable remedy.") The dismissing DCNJ and the adopting Third Circuit professed that petitioner's rule 60(b) Motion was a successive writ, among other reasons for motion denial. A review of death penalty cases provides valuable insight. Supreme Court decisions in death penalty cases instruct that petitioners attempting to show actual innocence of a sentencing factor are held to a higher standard than those attempting to show actual innocence of the

offense. In House v. Bell, 547 U.S. 518, 554 (2006), this Court assumed the viability of a freestanding actual innocence claim and stated: "a freestanding actual innocence claim would require more convincing proof of innocence than the gateway standard of Schlup." House was another wheelchair bound petitioner who found relief through resort to DNA experts and testing, the realm of experts and similar to those in petitioners corner and diametric to the States' co-conspirators.

It should be further noted that in Schlup at 316, this Court noted that "the procedurally barred assertions of ineffective assistance of counsel and prosecutorial misconduct on their own would have been insufficient to allow a court to reach the merits of the barred constitutional claims." This Petitioner has made valid, supported innocence claims. The innocent should not be procedurally barred from seeking and being granted a writ of Habeas Corpus. Reverting to *House*, this Court mandated consideration of *all* the evidence that might tend to establish innocence.

Stephen has lucidly surpassed this Court's demanding standards and warrants Due Process relief for both equitable Habeas reasons and also for those cited under the standards of § 2243 "Law and Justice.". In Calderon v. Thompson, 523 U.S. 538, 559 (1998) "Although demanding in all cases, the precise scope of the miscarriage of justice exception depends on the nature of the challenge brought by the habeas petitioner." In a non-capital case involving a similar plea situation, this Court held (c) He may attempt to make an actual innocence showing. Actual innocence means Factual Innocence, not mere legal insufficiency. Bousley v.United States, 523 U.S. 614,615 (1998) Parenthetically, This case was a non-

capital application of Schlup's "gateway" which other Circuits have also applied since in other non-capital cases., as well As to constitutional Due Process, this Court has stated in a conviction setting: "The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt." In re Winship, 397 U.S. 358 (1970). There is the firm, valid presumption that the Constitution prohibits the State from accepting a guilty plea from an innocent person, under advice from counsel. This Court should clarify if it is at all possible, under the Sixth Amendment.

Since McMann v. Richardson, 397, U.S. 759, 773 (1970), this Court has continued to recognize for purposes of collateral review, the fundamental differences between convictions secured by plea agreements versus convictions by trial. Petitioner feels certain that this Court also recognizes that the overwhelming majority of criminal charges are resolved in the State arena through plea agreements similar to his; and hence, said agreements are the most vulnerable to prosecutorial misconduct and also to ineffective assistance of counsel claims. As was found in: United States v. Ruiz, 536 U.S. 622, 629 (2002) (therein, a prosecutor is not required to turn over impeachment materials before a defendant decides to plead guilty, because impeachment information 'is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary." [emphasis in original]}; United States v. Broce, 488 U.S. 563, 569 (1989) (in a collateral challenge to a conviction obtained by a guilty plea, 'the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack."); Tollett v. Henderson, 411 U.S. 258, 267 ((1973) (a defendant

who pleads guilty upon the advice of counsel may attack the validity of the plea only by showing that counsel's advice was not within the standards set for the in *McMann").*

States and prosecutors have a clear interest in selling pleas, and concealing any misconduct, and maintaining finality. If it's a Due Process violation in a trial context, there is the presumption that the same holds true in a plea context and as further impetus to grant this writ. "The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment." Estelle V. Williams, 425 U.S. 501, 503 (1976) There is the presumption that the State is obligated to play by the rules and whether it's during a trial or a plea hearing. Fairness demands nothing less. Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974) and Lisenba v. California, 314 U.S. 219, 236 (1941). Defendants should not have to rely solely upon the competence of defense attorneys to ensure fair play at trial or during plea negotiations. This Court should grant the Habeas Writ and address just what fair play obligations are imposed upon the State during plea negotiations; notwithstanding, petitioners still maintains an innocent was wrongfully indicted.

2. RULE 60(B) MOTIONS

Petitioner acted in good faith and neither State entity filed an opposition or a response to the Habeas petition. Equitable considerations should have controlled the disposition and grant of his Rule 60(b) motion; particularly in light of the supported innocence position. Additionally, there was an "excusable neglect" argument, under Pioneer Investment Svcs. Co. v. Brunswick Assoc. LP, 507 U.S. 380 (1993) for not fully developing the "in

custody" aspect of his petition and brief that should have further authoritatively swayed both federal courts. As to the lack of "extraordinary circumstances" cited and relied upon by both federal courts, Stephen relied upon his supported innocence claim. In a criminal constitutional setting, there can be no higher or greater "extraordinary circumstance."

This Court addressed "extraordinary circumstances" in a criminal setting in Kugler v. Helfant, 421 U.S. 117, 124 (1975) "where the state law to be applied in the criminal proceeding is flagrantly and patently violative of express constitutional prohibitions, or where there exist other extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment." Helfant was an application for federal injunctive relief on state criminal proceedings. An attorney's malfeasance was grounds for equitable tolling of the stringent one year statute of limitation on AEDPA filing in Baldayaque v. United States, 338 F3d 145 (CA2 2003) *Holding* ""The district court issued a COA on the issue whether our holding in Smaldone v. Senkowski, 273 F3d 133 (CA2 2001), always precludes the application of equitable tolling in a case where a habeas petition is untimely because of the extraordinary actions of the petitioner's attorney. We hold that it does not."

Furthermore, petitioner's matter is in accord with the *holding* of Ackermann v. United States, 340 U.S. 193 (1950) for "excusable neglect", because his motion for 60(b) relief was filed within one year. Petitioner is also in accord with the principles of Klapprott v. United States, 335 U.S. 601, 615 (1949) wherein was stated and similar to a lack of a trial for Stephen "Petitioner is entitled to a fair trial. Fair hearings are

in accord with elemental concepts of justice, and the language of the "other reason" clause of 60(b) is broad enough to authorize the Court to set aside the default judgment and to grant petitioner a fair hearing. This Court is able to set aside a negligently entered guilty plea of an innocent for a fair trial, if the State so believes it is able to again proceed past an indictment stage for a second time.

Even if this motion were construed as a successive Habeas petition, as both federal Courts professed, there was an innocence exclusion under *§ 2244(b)(2)* and there was no previous "on the merits" resolution of the Habeas petition. Gonzalez v. Crosby, 545 U.S. 524, 532 (2005). Herein, "The State has experienced a windfall, while the state prisoner has been deprived contrary to congressional intent of his valuable right to one full round of federal habeas review." Gonzalez at 541. Circumstances of Phelps v. Almeida, 569 F3d 1120 1137 (9th Cir 2009) reflect similar, but longer, suffering at the hands of the State like petitioner and where the Court of Appeals granted motion relief citing "extraordinary circumstances" in a Habeas matter. "We cannot imagine a more sterling example of diligence than Phelps has exhibited. At every stage of this case over the past decade, Phelps has pressed all possible avenues of relief, has been remarkably undeterred by the repeated and often unjustified setbacks he has suffered, an has put forward cogent, compelling, and correct legal argument.....to have the merits of his constitutional claims reviewed by a federal judge." Another federal court granted equitable habeas relief, citing *Gonzalez,* in Mitchell v. Rees, 430 F. Supp2d717 (M.D. Tenn, 2006) *holding* "(2) extraordinary circumstances justified the reopening of a final judgment dismissing habeas petition since a failure to grant relief would result in a miscarriage of justice in that petitioner would be

required to serve a life sentence....." Although not a life sentence, petitioner also faces a miscarriage of justice without Habeas relief.

B. CONTINUING COLLATERAL CONSEQUENCES SATISFY JURISDICTIONAL "IN CUSTODY" REQUIREMENTS, AS DECLARED BY THIS COURT AND AS GUARANTEED AND PROTECTED CONSTITUTIONAL LIBERTY AND PROPERTY INTERESTS WARRANTING CERTIORARI FOR FURTHER DEFENITION; AND ALSO IN THE CONTEXT OF THE INNOCENT PETITIONER.

1. REPUTATIONAL LIBERTY INTERESTS

Although the numbers have dropped secondary to surrounding State competition in the past few years and recessional pressures, the advent of gaming has seen average yearly visitor numbers to Atlantic City in the neighborhood of 34 million. The Atlantic City Press, where petitioner's defamatory articles were published, covers most of South Jersey and Ocean County and is available Online through the Internet. It is broadly read by those with a general interest in Atlantic City and the global Gaming Market. The dissemination and impact of this per se repetitious defamation on Stephen and his family are painfully obvious and make not mistake as to the flash and residual impact or Internet defamation over and in conjunction with print media, material.

Stephen is highly visible while utilizing his hand-propelled cycle during his daily runs down the Boardwalk. Immediately after the defamatory articles were published, he was frequently stopped by those who knew him to discuss the publications and to his embarrassment. Similarly, his daughter teaches in a

local school district and heard several derogatory comments about her father and to her face. The publications' impact was wide and diverse and totally uncalled for, and as being without substance.

Whether the Press checked sources or just repeated them is irrelevant, at this juncture. What is relevant is their knowledge of the global Internet dissemination of their per se defamation and shaming. Daniel Solove stated it best in his book: The Future of Reputation: gossip, rumor, and privacy on the Internet, (Yale U. Pr.-2007)

> "One of the chief drawback of Internet shaming is the permanence of its effects. Internet shaming creates an indelible blemish on a persons' identity. Being shamed in cyberspace is akin to being marked for life. It's similar to being forced to wear a digital scarlet letter or being branded or tattooed." Ch. 4, p 94

"Even putting aside official criminal record searches, regular searches on Google can reveal conviction through reports in news stories, blogs, or other sources." The Stigma of Conviction: Coram Nobis, Civil Disabilities, and the Right to Clear ones' Name, 2009 Brigham Young U.L.Rev.1277, 1316, David Wolitz. As previously cited and with some irony, both federal courts believed that petitioner should resort to state Coram Nobis. The irony is that Coram Nobis requires a showing of lingering or continuing "collateral consequences" that neither federal court could find for petitioner.

Stephen is entitled to a good name and to maintaining his reputation and standing in the community. Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974). Petitioner's reputation was severely

damaged with the aid of the State and through the Press publications traceable to those sources. Meese v. Keene, 481 U.S. 465 (1987) (*Holding*). The sham criminal proceedings in concert with private parties were "state action" within the meaning of the Fourteenth Amendment. Lisenba v. California, 313 U.S. 219, 236 (1941). Stephen surpassed the "stigma plus test" of Paul v. Davis, 424 U.S. 693, 712 (1976) and both federal courts were obligated to provide Habeas relief and to follow this Court's lead, but it also may very well be that the Internet did not exist when Paul was decided and the test may no longer be valid and should be discarded. Additionally, there were no "implications" in Stephen's defamatory article. They were direct and malicious and unlike those found in Milkovich v. Lorain Journal, 497 U.S. 1, 21-22(1990). This Court should weigh the broad, endless shaming power of Internet defamation on innocent Habeas petitioners by their wrongful convictions or pleas for guidance to lower courts, whether state or federal. Daniel M. Kahan in his What Do Alternative Sanctions Mean? 63 U. Chi. L.R. 591, 636 (1996)

> "Shaming penalties might even more accurately be described as degradation penalties. All of them satisfy what Harold conditions of successful status degradation ceremonies. They Garfinkel identifies as the are imposed by an agent invested with moral authority of the community; they denounce the wrongdoer and his conduct as contrary to shared moral norms; and they shared moral norms; and they ritualistically separate the wrongdoer from those who subscribe to such norms."

It's should have been clear to both federal courts that Stephen had been shamed and stigmatized, under cited, binding precedent and this Court should exercise its supervisory and guiding jurisdiction.

2. ECONOMIC PROPERTY INTERESTS

The right to recover for personal injuries is guaranteed under N.J. Constitution, Article I, New Jersey Statutes, and Common Law. The dismissal of Stephen's civil personal injury suit for his paralysis and by a criminal division judge is "state action", under the Fourteenth Amendment. New York Times Co. v. Sullivan, 376 U.S. 254 (1964) on point (*Holding*) A civil suit for paralytic injuries involves substantial issues for both parties and there should be due process guaranteed out of fairness to all involved parties. The State cooperated in defamation and attached a "badge of infamy" to Stephen. Due process was due. Wieman v. Updegraff, 344 U.S. 183, 191 (1952) as to Due Process, speaks loud and clear. Parenthetically and as previously stated, the civil defendants never came forth with countering expert witness denying spinal paralysis or causal relationship, until criminal charges were brought and even then, no entity produced supporting expert witnesses for those charges. Both federal courts were alerted to petitioner's due processes denial and both federal courts turned their backs on petitioner and contrary to binding precedent and, again, this Court should exercise its guiding supervisory jurisdiction and clarify this issue.

3. COLLATERAL CONSEQUENCES ATTACH TO WRONGFUL CONVICTIONS/PLEAS CONFERRING HABEAS JURISDICTION

Through a line of decisions, this Court has recognized the existence of adverse collateral consequences stemming or flowing out of criminal convictions or pleas and required for Habeas and also for Coram Nobis relief. There is the firm or

pronounced presumption that that the innocent suffer those consequences to a deeper degree warranting priority consideration by and from this Court.

St. Pierre v. United States, 319 U.S. 41 (1943) found that "the moral stigma of a judgment no longer affecting legal rights does not present a case or controversy." There is the converse presumption that affected legal right present a case or a controversy. Although in a Double Jeopardy context, in Benton v. Maryland, 395 U. S. 784, 790 (1969) and citing: *Sibron v. New York,* 390 U.S. 40 (1968), "we held that a criminal case did not become moot upon the expiration of the sentence imposed. We noted "the obvious fact of life that most criminal convictions do, in fact, entail adverse collateral legal consequences." We concluded that the mere possibility of such collateral consequences was enough to give the case the "impact of actuality" which was necessary to make it a justiciable case or controversy.

Sibron and a number of other recent cases have canvassed the adverse collateral effects of criminal convictions. In Spencer v. Kemna, 523 U.S. 1,8 (1998) this court stated: "We have been willing to presume that a wrongful criminal conviction has continuing collateral consequences..." The impact on an individual's dignity and stigma of a criminal conviction were not found to be trivial and were found to have collateral consequences when fundamental rights were involved in: Lawrence v. Texas, 539 U.S. 558, 575-576 (2003). In a similar manner, Stephen is asserting fundamental Constitutional Rights guaranteed under the Sixth and Fourteenth Amendments, specifically. This Court should grant certiorari to protect those impacted rights, to supervise the lower federal courts, and to determine if whether or not the dismissal of a civil suit by a criminal division state judge without petitioner's agreement in his plea and contrary to court rules is a collateral consequence of said plea

notwithstanding his maintained innocence position. A civil suit personal injury remedy is a protected property interest.

C. INEFFECTIVENESS OF COUNSEL DURING INDICTMENT AND PLEA STAGES DENIED PETITIONER SIXTH AMENDMENT PROTECTION CONTRARY TO STRICKLAND AND STRICTER KNOWLES STANDARDS OF THIS COURT .

In the *Strickland* analysis, the determinative question is whether there is a reasonable probability that but for counsels' unprofessional errors, the result of the proceeding would have been different. See: Glover v. United States, 531 U.S. 198, 202-03 (2001) A defendant need show that counsel's deficient conduct more likely than not altered the outcome in the case and in petitioner's matter it would probably be sufficient to undermine confidence in the outcome to show that he could have withdrawn his plea, if given competent counsel or that the indictment, itself, would have been subjected to a Motion to Dismiss by defense counsel.

Suffice to say that where defense counsel, like Stephen's, did not give competent advice and did not explain matters and had his client plead guilty to a crime not committed; then the pleas was not voluntary under this Court's Henderson v. Morgan, 426 U.S. 637 (1976) (*Holding*). Additionally, the plea was without a factual basis and contrary to N.J. Court Rule 3:9-2. There is the presumption that competent trial counsel would have command of N.J. Court Rules. In a Habeas setting, Tollett v. Henderson, 411 U.S. 258, 267 ((1973) stated "If a prisoner pleads guilty on the advice of counsel, he must demonstrate that the advice was not within the range of

competence demanded of attorneys in criminal cases." Essentially, petitioner had no representation.

The ineffective-assistance claims are uncomplicated and do not require the sifting of lengthy and complex trial/litigation records. Suffice to say, appearances are that little, if any, pre-trial preparation and discovery were conducted or exercised and to Stephen's prejudice. The incompetence test and *Holding* of Kimmelman v. Morrison, 477 U.S. 365 (1986) has been fulfilled through petitioner's criminal defense attorney's gross neglect at the indictment pre-trial and plea stages and these aspects were argued and demonstrated to the Lower Federal Courts. Not only did his criminal defense attorney neglect him, but his civil suit attorney withdrew from his case upon his indictment and knowing full well that medical records supported petitioner's claims and that the State had no medically supported case. The criminal defense attorney failed to challenge and to impeach a self-serving chiropractor who admitted to destroying petitioner's medical records and who had been treating a vascular medical condition with spinal adjustments and who the State relied upon for a medical diagnosis; along with their own investigator's medical opinion.

The same criminal defense attorney failed to review civil deposition records and had his client plead guilty to a crime not committed and for answers not asked and for questions not material to a civil trial outcome. He clearly did not know nor was aware of Perjury case law nor had command of the Perjury Statute. Just as in Williams v. Taylor, 529 U.S. 4209 (2000) and to paraphrase "It follows that the Federal Courts rendered a decision that was contrary to, or involved an unreasonable application of clearly

established Federal Law. Stephens constitutional right to the effective assistance of counsel as defined in Strickland v. Washington, 466 U.S. 668 (1984) was violated." Additionally and under those higher standards of Knowles v. Mirzyance, 129 S.Ct. 1411 2009) for "decisions contrary to or an unreasonable application of clearly established federal law" such as petitioners; a grant of habeas petition is warranted where defense counsel's performance has been ineffective and has resulted in prejudice.

Stephen's prejudice from a lack of investigation is similar to, and parallels, the situation and H*olding* found in and of Wiggins v. Smith, 539 U.S. 156 (2003) "(2) inadequate investigation by counsel prejudiced petitioner." Under Hill v. Lockhart, 474 U.S. 52 (1985) *Holding* the incompetence of petitioner's counsel advising him to plead guilty to a crime not committed makes his plea to Perjury involuntary." Furthermore, he would have preferred going to trial, but with another attorney, under the circumstances.

Most recently, the *Holding* of Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527 (2009) applies, as to qualifying the gross negligence of petitioner's criminal defense attorney and with retroactive application secondary to pre-existing Sixth Amendment basis. The crux of petitioner's argument or position is that an attorney worth their salt should have known (1) that an unlicensed individual who is not a MD may not give a medical opinion and as being criminal in the State of New Jersey contrary to the Sixth Amendment; (2) The State, itself, had no available recognized defense for engaging in criminal misconduct against Stephen. Retroactive application of Melendez or of Crawford v. Washington, 541 U.S. 36 (2004) would not be an issue or a problem.

D. THE STATE DENIED PETITIONER FOURTEENTH AMENDMENT DUE PROCESS THROUGH JUDICIALLY BIASED FORUM AND THROUGH DISMISSAL OF CIVIL SUIT BY A CRIMINAL DIVISION JUDGE WHERE THERE WAS CONFLICT OF INTEREST *ALONG* WITH SIXTH AMENDMENT GUARANTEE EROSION OF AN IMPARTIAL FORUM *AND* AS ACTING IN CONCERT WITH PROSECUTORIAL MISCONDUCT.

Civil remedy for personal injuries resulting from the negligence of another are rights of common-law, statute, and court rules, in New Jersey. "A cause of action is the fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief." Cornblatt v. Barow, 153 N.J. 218, 233 (1998). Although the Law Division, Criminal Part and the Law Division, Civil Part are courts of general jurisdiction, they may not transfer causes between the two parts, under court rules. The Criminal Part hears indictable and non-indictable offenses and the Civil Part hears civil actions. A plea falls under the purview of R. 3-9-2 and nothing in that criminal rule grants the court the right to dismiss a civil suit. Involuntary dismissals come under civil rules and are solely applicable to the Civil Part and for stated cause(s).

When the Criminal Part Judge dismissed petitioner's civil action, he effectively denied access to the courts and in contravention of the Due Process guarantees of the Fourteenth Amendment and of the Privileges and Immunities Clause of Article IV, Section 2. *See* Bounds v. Smith, 430 U.S. 817, 825

(1977). It should be quite clear, that the civil suit dismissal arose to State Action of unconstitutional dimensions qualifying for Habeas relief, as being both a liberty and property deprivation.

The Criminal Part Judge was too close to civil suit defendants to render impartial adjudication. Although the Sixth Amendment guarantees an impartial jury, along with counsel, there is the presumption that impartiality guarantees also inure to the Judiciary. This Court's very recent *Holding* in Caperton et. al. v. A.T. Massey Coal Co. Inc., 556 U.S. , 129 S.Ct. 2252 (2009) is instructive and applicable to Petitioner's matter:

> "(B) Because the objective standards implementing the Due Process clause do not require proof of actual bias, this Court does question Justice Benjamin's findings of impartiality and propriety and need not determine whether there was actual bias. Rather, the question is whether, under a Realistic appraisal of psychological tendencies And human weakness, the risk of actual bias Or prejudgment that the practice must be Forbidden if the guarantee if the guarantee of Due process is to be adequately implemented."

Court actions accepting a plea without factual basis and dismissing civil suit questions the impartiality of a Judge and to the degree sufficient enough to grant a Habeas application. The *holding* of Bracy v. Gramley, 520 U.S. 899 (1997) is illustrative of Stephen's plight: "Petitioner has made a sufficient factual showing, under Habeas Corpus Rule 6(a), to establish good cause for discovery on his claim of an absence of judicial impartiality in his case."

Thus far, the undisputed facts of Stephen's case establish due process violations. Due process has been denied by circumstances that have been created by the appearances or likelihood of an absence of impartiality. Because the constitutional guarantees have been apparently violated, this Court's duty and jurisdictional obligation are clear. Whether at the State or Federal level, impartiality is critical to preserve respect for the judiciary. Judicial integrity is an interest of the highest order. Weighing reputation, a recurring theme within, the Judicial Branch depends upon the Public's perception of honesty and impartiality. Petitioner found a painful absence of the same at the State level. This Court's path or constitutional course has been charted.

The Atlantic County Prosecutor had exculpatory medical records and medical insurance records in his possession that he withheld from the Grand Jury and by withholding the same from the Grand Jury engaged in a Fourteenth Amendment Due Process violation, under standards of Brady v. Maryland, 373 U.S. 83 (1963). More recently, the Supreme Court addressed "improper methods" such as those utilized in the petitioner's case in Cone v. Bell, 07-1114, 556 U.S. (2009).

> "Although the State is obliged to prosecute with earnestness and vigor, it is as much its duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.....Because the evidence suppressed at Cone's trial may well have been material to the jury's assessment of the proper punishment in this case, we conclude that a full review of the suppressed evidence and its effect is warranted."

In petitioner's case, medical and insurance records, withheld by the State and along with the

chiropractor's two bills, would have, no doubt, swayed the Grand Jury to decline an indictment, because those records would have shown that, after being stabilized at ACMC ER in Atlantic City, he was air-lifted to TJUH. Two weeks after admission to TJUH, petitioner developed full paralysis in his lower limbs, after efforts to reduce spinal cord swelling, including surgery, were ineffective. Irrefutable records would have shown and supported that his spinal cord injuries stemmed from his fall at the casino garage and that he had more than adequate medical insurance through the ironworkers union.

Parenthetically, the only related medicals bills petitioner accrued prior to his fall at Caesars were those of two chiropractor visits: $602.00 and $235.00. Whether requested or not, the State was well aware that favorable, exculpatory evidence existed for petitioner and was obligated to present it with all its implications to the Grand Jury; or to not even seek an indictment based upon the known vindictive testimony or statements of a person who had just robbed petitioner. That they did is a blatant due process violation, under Brady at 87. "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." It was more than Bad Faith to withhold exculpatory evidence and to continue on with an indictment knowing full well that petitioner was innocent. Essentially, the State acted in concert with private parties to frame an innocent party. There can be no other conclusion or reading of concerted actions.

Both the District Court and the reviewing Third Circuit applied the incorrect legal standard and contrary to this Court's clearly established law for measuring prejudice suffered, as a result of the

prosecutor's misconduct. Taking note of the rule in United States v. Bagley, 473 U.S. 667, 682 (1985) that the suppression of exculpatory evidence will result in a new trial if there is a reasonable likelihood that the result of the proceeding would be different. The same would hold true for the vindictive complaining retaliatory witness and for the ulterior motivated chiropractor who admitted to destroying medical records, on a taped phone conversation by the prosecutor, to the petitioner. The testimony would have fallen under the purview of Nappe v. Illinois, 360 U.S. 264, 270 (1959) and was withheld from the Grand Jury. This Court's *Holding* in Banks v. Dretke, 540 U.S. 668, 696 (2004) reversed a denial of a Certificate of Appealability where withheld exculpatory material evidence was involved. The State's declared position was rejected and criticized, therein, as should be, herein: "The State here nevertheless urges, in effect, that the prosecution can lie and conceal and the prisoner still has the burden to...discover the evidence, so long as the potential existence of a prosecutorial misconduct claim might have been detected, A rule thus declaring 'a prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process. ." Herein, the State of New Jersey has an operating definition of Due Process and brazenly contrary to the U.S. Constitution warranting a Certiorari grant by this Court.

CONCLUSION

Since falling in the casino garage and suffering resulting paralysis, this wheelchair bound petitioner has had to overcome numerous obstacles; yet, this state lawsuit/criminal collaboration has been more than an oppressive yoke with ensuing public reputational flogging and dismissal of a personal

injury suit for those paralytic injuries. Petitioner has no other remedy than this Habeas action; yet again and within, this action presents him with the opportunity to stand for and defend the rights of other innocent petitioners from being victimized by negligent attorneys acting in concert with partial judges and less than honest prosecutors. This Court should stand with and for him under reasons of principle, policy, equity, and constitutional imperatives.

Very respectfully submitted

Stephen G. Mattis

Dated:: 8/15/10

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN G. MATTIS	:	
PETITIONER	:	CIVIL NO. 08-5393(RMB)
VS	:	
STATE OF NEW JERSEY		
ET,AL.,	:	**OPINION**
RESPONDENTS	:	

APPEARANCES:
STEPHEN G. MATTIS, PRO SE
301 W. DELILAH ROAD
PLEASANTVILLE, NJ 08232

BUMB, DISTRICT JUDGE

Petitioner, Stephen G. Mattis, files this petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. He has paid the $5.00 filing fee. For the following reasons, the Court will dismiss the petition.

BACKGROUND

Petitioner States that on June 21, 1995, he pled guilty to one count of perjury in the Superior Court of New Jersey, Atlantic County. Petitioner is not detained, and states that he has served his sentence.

Subsequent to entering the guilty plea, Petitioner filed for post-conviction relief (PCR) in the state court, alleging ineffective assistance of counsel, and that he was innocent of the charge. He files this habeas petition, under § 2241, claiming that he received

ineffective assistance at the indictment and pleas stage, and that there was prosecutorial misconduct. Petitioner also claims that the sentencing judge/PCR judge was biased as having a personal interest in a pending civil suit.

Petitioner does not inform the Court what relief he seeks in the habeas petition.

DISCUSSION

Petitioner seeks a writ of habeas corpus, pursuant to 28 U.S.C. § 2241 © (3). That section states that the writ will not be extended to a prisoner unless "he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(3).

United States Code Title 28, Section 2243 provides in relevant part as follows:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an Order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

A pro se pleading is held to less stringent standards than more formal pleadings drafted by lawyers. See Estelle v. Ganble, 429 U.S. 97 , 106 (1976) ; Haines v. Kerner, 404 U.S. 519, 520 (1972). A Pro se habeas petition and any supporting submissions must be construed liberally and with a measure of tolerance. See Royce v. Hahn, 152 F3d 116, 118 (3rd 1998); Lewis v. Attorney General, 878 F2d 714, 721-22 (3rd 1989); United States v. Brierley, 414 F2d 552, 555 3rd (1969), cert. denied, 399 U.S. 912 (1970). Nevertheless, a federal district court can

dismiss a habeas corpus petition if it appears from the face of the petition that the petitioner is not entitled to relief. See Lonchar v. Thomas, 517 U.S. 314 , 320 (1996); siers v. ryan, 773 F2d 37, 45 3rd (1985), cert. denied 490 U.S. 1025 (1989); see also 28 U.S.C. §§ 2243, 2255.

First, this Court notes that as Petitioner was a state prisoner, not a federal prisoner, his claims would fall under the purview of 28 U.S.C.§ 2254, as they challenge a state court judgment.[1]

However, Petitioner has not alleged that he is "in custody" in violation of the Constitution or laws of the United States, as required by § 2254. Instead, Petitioner states in his complaint that he is not in custody, is not detained, and has served his sentence on the perjury charge. As the Court of Appeals for the Third Circuit has put it, "custody is the passport to federal habeas corpus jurisdiction." United States ex rel. Dessus v. Commonwealth of Pennsylvania, 452 F2d 557, 560 (3rd 1971), cert. denied 409 U.S. 853 (1972). "Custody" is defined not only as physical confinement, but would include circumstances entailing such limitations on a person's liberty as those imposed during parole. See Maleng v. Cook, 490 U.S. 488, 491 (1989), see also Hensley v. Municipal Court, 411 U.S. 345 (1973) (habeas petitioner released on own recognizance, but who suffered restraints on freedom of movement not shared by public generally,

---

[1] Title 28 of the United States Code, section 2254 provides that the district court "shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the Unites States." 28 U.S.C. § 2254(a).

met "in custody" requirement). Nonetheless, a habeas petitioner is not "in custody" under a conviction when the sentence imposed for that conviction has fully expired at the time his petition is filed. See Maleng, 490 U.S. at 491.

Therefore, because Petitioner is no longer "in custody" under § 2254 for the conviction he seeks to challenge, and because Petitioner seeks to challenge a fully-expired state court conviction, the petition will be dismissed for lack of jurisdiction. Instead, the proper vehicle to challenge an expired state court conviction is a petition for writ of error coram nobis, brought before the state court that imposed the challenged criminal judgment. See Obado v. New Jersey, 328 F3d 716, 718 (3rd , 2003).[2]

An appropriate Order accompanies this Opinion.

s/ Renee Marie Bumb

---

[2] To the extent the petition could be construed as seeking relief under 28 U.S.C. § 2254, no certificate of appealability shall issue. Pursuant to 28 U.S.C. § 2253(c), unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken from a final order in a proceeding under 28 U.S. C. § 2254. A certificate of appealability may iss "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims of that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner' underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was corre'ct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Here, jurists of reason would not find this court's § 2254 jurisdictional ruling "debatable."

RENEE MARIE BUMB
United States District Judge

Dated: January 14, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN G. MATTIS	:	
PETITIONER	:	CIVIL NO.
	:	08-5393(RMB)
VS	:	
STATE OF NEW JERSEY		
ET,AL.,	:	**ORDER**
RESPONDENTS	:	(CLOSED)

For the reasons set for the in the Opinion filed herewith,

It is on the 14th day of **January** 2009,

ORDERED that the Petition is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction; and it is further

ORDERED that no Certificate of Appealability shall issue;
And it is further

ORDERED that the clerk of the Court shall close this case.

s/Renee Marie Bumb
RENEE MARIE BUMB
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN G. MATTIS	:	
PETITIONER	:	CIVIL NO. 08-5393(RMB)
VS	:	
STATE OF NEW JERSEY:		
ET,AL.,	:	**OPINION**
RESPONDENTS	:	

APPEARANCES:
STEPHEN G. MATTIS, PRO SE
301 W. DELILAH ROAD
PLEASANTVILLE, NJ 08232

BUMB, District Judge

This matter is before the Court on Petitioner's Motion for Reconsideration (docket entry 4), which seeks reconsideration by this Court of this Court's Opinion and Order, dated January 14, 2009 (docket entries 2 & 3), as well as Petitioner's motion to vacate the Opinion and Order of January 14, 2009 (docket entry 8).

Having considered the motions pursuant to Fed. R. Civ. P. 78, the Court will deny the motions.

BACKGROUND

On October 31, 2008, Petitioner filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. In the Opinion dated January 14, 2009, dismissing the petition, this Court noted that Petitioner was not "in custody" for purposes of habeas jurisdiction, because he sought to challenge a fully-expired state court conviction. (Opinion, docket entry 2, at pp. 1-2).

In his Motion for Reconsideration (docket entry 4), filed on February 4, 2009, Petitioner did not submit any arguments. However, in May of 2009, Petitioner sent a letter to this Court requested that the motion for reconsideration by held "in abeyance," as he had determined that he had filed the motion out of time, and wished to file a motion pursuant to Federal Rule of Civil Procedure 60(b)(1) instead (docket entry 7).

On June 3, 2009, Petitioner filed the Motion to Vacate, pursuant to Rule 60(b) (docket entry 8). Petitioner argues in the motion that habeas relief was available to him; that the "in custody" requirement for habeas jurisdiction is "excusable;" that Petitioner is actually innocent of his underlying conviction; that counsel was ineffective in his underlying conviction; that reputation is a protected liberty interest; that there were collateral consequences to his conviction; that dismissal of his civil suit by the criminal judge was improper; and that writs of error coram nobis are no longer available in New Jersey courts. See Brief, (docket entry 9).

DISCUSSION

A. Rule 59(e)

Federal Rule of Civil Procedure 59(e), concerning motions to alter or amend a judgment, states: "A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment." Further, Local Civil Rule 7.1(i), governing motions for reconsideration in this District Court, directs that such motions must be "served and filed within 10

business days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge." As noted by the Petitioner, his motion for reconsideration was filed well over 10 days, and thus was untimely. Therefore, the motion for reconsideration will be dismissed.

B. Rule 60(b)

Rule 60(b) provides, in pertinent part: On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable, or (6) any other reason that justifies relief.

"The general purpose of Rule 60(b)...is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." Boughner v. Sec'y of Health Educ. & Welfare, 572 F2d 976, 977 3rd (1978) quoted in Coltec Industries, Inc. v. Hobgood, 280 F3d 262, 271 (3rd 2002).

"A motion filed pursuant to Rule 60(b) is addressed to the sound discretion of the trial court guided by

> accepted legal principles applied in light of all the relevant circumstances. Rule 60(b), however, does not confer upon the district courts a standardless residual of discretionary power to set aside judgments. Rather, relief under Rule 60(b) is available only under such circumstances that the overriding interest in the finality and repose of judgments may properly be overcome. The remedy provided by Rule 60(b) is extraordinary, and (only) special circumstances may justify granting relief under it." Tischio v. Bontex, Inc., 16 F. Supp.2d 511, 522 (D.N.J. 1998) (internal citations omitted).

Relief is available only in cases evidencing extraordinary circumstances. See Ackermann v. United States, 340 U.S. 193 (1950); Stradley v. Cortez, 518 F2d 488, 493 (3rd 1975). A motion under Rule 60(b)(6) 'must fully substantiated by adequate proof and its exceptional character must be clearly established." FDIC v. Alker 234 F2d 113, 116-17 (3rd 1956).

To the extent a moving party seeks to relitigate the court's prior conclusions, Rule (60(b) is not an appropriate vehicle. "Courts must be guided by the well established principle that a motion under Rule (60(b) may not be used as a substitute for appeal. It follows therefore that it is improper to grant relief under Rule 60(b)(6) if the aggrieved party could have reasonably sought the same relief by means of appeal." Martinez McBean v. Government of Virgin Island, 562 F2d 908, 911 3rd 1977). (citation omitted).

In this case, nothing presented by Petitioner challenges this Court's determination that Petitioner

was not "in custody" at the time he filed his habeas petition. Thus, this Court ruling that there was no jurisdiction to entertain the habeas petition will stand.

Further, Petitioner has not demonstrated that he satisfies any of the reasons warranting 60(b0 relief. Petitioner has not shown entitlement to be relieved from the judgment due to mistake, inadvertence, surprise, or excusable neglect, see Rule 60(b)(1); has not presented newly discovered evidence, see Rule 60(b)(2); and has not satisfied the criteria for Rule 60(b)(3)-(6).

Therefore, with regard to a Rule 60(b) motion, Petitioner has not demonstrated that he is entitled to relief from this Court's judgment of January 14, 2009. He simply seeks to introduce the arguments presented in his habeas petition, and arguments pertaining to his underlying conviction. Nothing Petitioner presents in his motion or brief convinces this Court that "extraordinary circumstances" exist which warrant 60(b) relief. Thus, Petitioner is not entitled to relief under Rule 60 (b) and his motion will be denied.

CONCLUSION

For the reasons set forth above, Petitioner's motion for reconsideration will be dismissed as untimely; the motion to vacate will be denied. An appropriate Order accompanies this Opinion.

s/Renee Marie Bumb

RENEE MARIE BUMB
United States District Judge

Dated: July 29, 2009

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN G. MATTIS	:	
PETITIONER	:	CIVIL NO. 08-5393(RMB)
VS	:	
STATE OF NEW JERSEY:		
ET,AL.,	:	**ORDER**
RESPONDENTS	:	(CLOSED)

For the reasons set for the in the Opinion filed herewith,

It is on this **29th** day of **July** 2009

ORDERED that Petitioner's Motion for Reconsideration (Docket No. 4) is hereby **DISMISSED**; and it is further

ORDERED that Petitioner's motion to Vacate (Docket No 8), is hereby **DENIED**; and that it is finally

ORDERED that the Clerk of the Court shall close this case.

s/Renee Marie Bumb
RENEE MARIE BUMB
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT No. 09-3762

STEPHEN G. MATTIS ;
APPELLANT :
Vs. :
STATE OF NEW JERSEY,ET AL:
(D.N.J. Civ. No. 08-cv-05393) :

Present: Chief Judge SCIRICA, WEIS AND GARTH
Circuit Judges

Submitted are:

(1) Appellant's request for a certificate of Appealability under 28 U.S.C. § 2253©(1); and

(2) Appellant's response in the above-captioned Case

Respectfully

Clerk

O R D E R

The foregoing application for a certificate of appealability is denied because Appelland has not made a 'substantial showing of the denial of a constitutional right" 28 U.S. C. § 2253©(2). For substantially the same reasons given by the District Court, Appellant has not shown that reasonable jurists would debate the District's denial of his motion for relief under Federal Rule of Civil Procedure 60(b). See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The

notice of appeal was not timely filed as to the order that denied Appellant's habeas petition, and our consideration of this application, therefore, is limited to the order denying relief under Rule 60(b)

By the Court,

S/Weis
United States Circuit J.

Dated: January 28, 2010

Supreme Court of the United States
Office of the Clerk
Washington, DC, 2054300001

March 12, 2010

Mr. Stephen G. Mattis
S-3
301 W. Delilah Rd
Pleasantville, NJ 08232

RE: Stephen G. Mattis
v. State of New Jersey, et al.
Application No 09A844

Dear Mr. Mattis:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on March 12, 2010 extended the time to and including June 28, 2010.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K Suter, Clerk
By
s/
Gail Johnson
Case Analyst

CONSTITUTIONAL AND STATUTORY PROVISIONS

ARTICLE IV, Section 2,-----in pertinent part reads: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

6TH AMENDMENT-------In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

14th AMENDMENT, SEC. 1 in pertinent part reads: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 28 U.S.C. § 2241 (c) & (c)(3) reads: "The writ of habeas corpus shall not extend to a prisoner unless---He is in custody in violation of the Constitution or laws or treaties of the United States."

Title 28 U.S.C. § 2242, Application reads in pertinent part: "It may be amended or supplemented as provided in the rules of procedure applicable to civil actions."

Title 28 U.S.C. § 2243, Issuance of writ; return; hearing; decision reads in pertinent part: "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

Title 28 U.S. C. § 2244(b)(2)(B)(ii), Finality of determination reads in pertinent part: "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that , but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."

Title 28 U.S.C. § 2253 (c)((2) reads in pertinent part: "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

Title 28 U.S.C. § 2254, State Custody; Remedies in Federal Courts: pertinent parts read:
"(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that - (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant."

"(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim - (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

"(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that -------- and (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

"(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a

determination of a factual issue made by a State court shall be presumed to be correct.

The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that - (A) the claim relies on - (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense."

2C:28-1. PERJURY, reads in pertinent part:

a. Offense defined. A person is guilty of perjury, a crime of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

b. Materiality. Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding or the disposition of the matter. It is no defense that the declarant mistakenly

believed the falsification to be immaterial. Whether a falsification is material is a question of law.

N.J. COURT RULE 3:9-2. Pleas;

A defendant may plead only guilty or not guilty to an offense. The court, in its discretion, may refuse to accept a plea of guilty and shall not accept such plea without first questioning the defendant personally, under oath or by affirmation, and determining by inquiry of the defendant and others, in the court's discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea. In addition to its inquiry of the defendant, the court may accept a written stipulation of facts, opinion, or state of mind that the defendant admits to be true, provided the stipulation is signed by the defendant, defense counsel, and the prosecutor. When the defendant is charged with a crime punishable by death, no factual basis shall be required from the defendant before entry of a plea of guilty to a capital offense or to a lesser included offense, provided the court is satisfied from the proofs presented that there is a factual basis for the plea. **For good cause shown the court may, in accepting a plea of guilty, order that such plea not be evidential in any civil proceeding**. If a plea of guilty is refused, no admission made by the defendant shall be admissible in evidence against the defendant at trial. If a defendant refuses to plead or stands mute, or if the court refuses to accept a plea of guilty, a plea of

not guilty shall be entered. Before accepting a plea of guilty, the court shall require the defendant to complete, insofar as applicable, and sign the appropriate form prescribed by the Administrative Director of the Courts, which shall then be filed with the criminal division manager's office.